

REMARKSRegarding the Claim Amendments:

The amendments to the claims add no new matter. The amendment to claim 1 finds support at page 15, lines 20 – 21, Figure 10, and page 21, lines 20 – 23 of the specification. The amendment to claim 2 finds support on page 4, lines 1 – 3 and on page 6, lines 12 – 25 of the specification. The amendment to withdrawn claim 13 finds support on page 1, lines 7 – 11, and in original claim 1 of the specification. The amendment to withdrawn claim 14 finds support on page 4, lines 1 – 3, and in original claim 1 of the specification.

Regarding the Restriction Requirement:

In compliance with the requirements of 37 C.F.R. §1.143, applicants provisionally elect Group I with traverse. Group I, as indicated in the present Office action includes claims 1 – 12 drawn to an immunoassay analyzer, classified in class 422, subclass 67.

The restriction requirement is moot in light of the amendment to claim 13. Claim 13 as currently amended, as well as claims 14 – 19, which depend from claim 13, cannot be performed by another materially different apparatus or by hand. The restriction requirement should be withdrawn.

Regarding the Rejections under 35 U.S.C §112, second paragraph:

The rejection regarding “how the samples are related to the test vessels”¹ is moot in light of the amendment to claim 1.

The use of “means for” language in claims 1 and 3 – 5 does not violate 35 U.S.C §112, second paragraph. “The proper test for meeting the definiteness requirement is that the corresponding structure (or material or acts) of a means (or step)-plus-function limitation must be disclosed in the specification itself in a way that one skilled in the art

¹ Page 4, lines 7 – 8 of the present Office action.

will understand what structure (or material or acts) will perform the recited function.”²

In claim 1, one skilled in the art will understand what structure (or material or acts) will perform the recited “means for loading one or more samples into one or more test vessels,” especially in light of page 15, lines 20 – 21, Figure 10, and page 21, lines 20 – 23 of the specification. One skilled in the art will understand what structure (or material or acts) will perform the recited “means for identifying tests to be performed on each of said one or more samples,” especially in light of page 7, lines 12 – 15 of the specification. One skilled in the art will understand what structure (or material or acts) will perform the recited “means for moving a plurality of test vessels to and from one or more resources,” especially in light of page 10, lines 11 – 15 of the specification.

In claim 3, one skilled in the art will understand what structure (or material or acts) will perform the recited “means for setting one or more resource saturation levels,” especially in light of page 7, lines 28 – 31 and page 18, line 16 – page 19, line 16 of the specification.

In claims 4 and 5, one skilled in the art will understand what structure (or material or acts) will perform the recited “means for modifying said one or more resource saturation levels,” especially in light of page 7, lines 28 – 31 and page 18, line 16 – page 19, line 16 of the specification.

The rejection of claim 2, regarding the determination of a launch of test sequence for each test to be performed is moot in light of the amendment to claim 2. Claim 2 as amended makes clear that the controller determines an optimized sequence for each sample. This optimized sequence is called a “launch of test sequence.” The launch of test sequence is determined based on any samples currently under test and any samples yet to be tested. As expressed in the specification, “[t]he dynamic controller will calculate test sequences for each of the samples based on resource and timing requirements and will launch the tests in an optimized sequence.” Similarly, according to claim 2 as amended, the launch of test sequence controls a time and order for tests to be launched.

² MPEP §2181, citing *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1381, 53 USPQ2d 1225, 1230 (Fed. Cir. 1999).

Regarding the Rejection under 35 U.S.C §102(b):

Claims 1 – 12 are not anticipated by *Hanawa et al.* (US 5,972,295). Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention.³ “The identical invention must be shown in as complete detail as is contained in the patent claim.”⁴

The *Hanawa et al.* reference does not show a means for identifying tests to be performed. Instead, the reference shows “a bar-code reader 5 as an identifying apparatus for identifying a destination of [a] sample rack....”⁵ This bar-code reader merely determines “whether the sample rack carried is a sample rack which needs not to be reexamined or a general sample rack which may need to be reexamined.”⁶ The bar-code reader does not identify tests to be performed. Indeed, the *Hanawa et al.* reference does not provide for different tests to be performed. As stated succinctly in its claims, the reference merely provides a single “analyzing unit for testing an analysis item of a sample sampled from a sample container contained in the sample rack....”⁷ Thus, the reference does not show a plurality of resources, each of said plurality of resources for performing a specified function on a test vessel, as required in the present claims.

Additionally, the reference does not show that each of the tests is to be performed in a test vessel. Again, the reference removes the sample from the sample container for testing (See: Column 5, lines 29 – 41 of US 5,972,295). Next, the reference does not show a computer controller which tracks the location of each test vessel, as is required in the present claims. As discussed above, the reference does not provide test vessels at all, however, the reference does not even track the location of the sample racks from which samples are removed for testing. Instead, the sample racks are processed in a first-in-first-out manner. The reference is unconcerned with the location of each sample within the analyzing apparatus, and merely determines at the fixed location of the bar-code reader whether a given sample needs to be reexamined. Finally, the reference does not show a computer controller which “determines a path for each test vessel between each

³ See, *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984).

⁴ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

⁵ Column 4, lines 45 – 46 of US 5,972,295.

⁶ Column 3, lines 18 – 22 of US 5,972,295.

⁷ Column 12, lines 21 – 23 of US 5,972,295.

resource based on the test identified for said test vessel by said means for identifying and the tests identified and location for all other test vessels of said plurality of test vessels” Again, the reference does not show test vessels, does not show a plurality of resources, and does not identify a test for each test vessel, thus the reference clearly does not determine a path for each test vessel between each resource and does not determine a path based on the test identified for each vessel, and the locations of all vessels. Instead, the *Hanawa et al.* reference merely determines whether each sample rack should be directed to the rack collecting unit **23** or the standby unit **40** based on whether the rack is likely to need to be reexamined. For at least these reasons, the present rejection should be withdrawn.

In Conclusion:

The present application is respectfully submitted to be in condition for allowance. Applicants request favorable action in this matter. In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner is welcome to contact the undersigned by phone to further the discussion.

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